

**CHARLOTTE PLANNING COMMISSION  
SUBDIVISION REVIEW  
FINDINGS OF FACT AND DECISION**

**Randi McCuin; Lance, James, Lynn, & Marjorie Mansfield; Lisa Gere; and Louise Selina Peyser  
Final Plan Application for a 3-lot Major Subdivision/PRD at 700 Mount Philo Road  
Application # PC-18-163-SD**

**Introduction and Procedural History**

This proceeding involves the second and final review for a 3-Lot Major Subdivision / Planned Residential Development (PRD) submitted by Melanie Peyser on behalf of Louise Selina Peyser for approval under the Town of Charlotte Land Use Regulations (hereafter referred to as “the Regulations”).

The Preliminary Plan application proposed to subdivide the 44.6-acre property located at 700 Mount Philo Road within the Rural (RUR) District into three lots as a PRD. A preliminary decision by the Planning Commission was rendered on July 19, 2018 after one public hearing, which occurred on June 7, 2018 (further details on the project are covered in decision **PC-18-73-SD**, recorded within the Charlotte Land Records, *Volume 233, Pages 716-726*).

The Final Plan application was received by the Planning & Zoning Office on September 12, 2018, and was scheduled for a public hearing to be held on October 18, 2018. A notice for the public hearing was published in *The Citizen* newspaper on September 27, 2018. An electronic notice was posted on the Charlotte Town website calendar. Hardcopy notices were posted at the following three locations: the Town Offices at 159 Ferry Road, the Old Brick Store in the West Charlotte Village, and Spear’s Corner Store in the East Charlotte Village; and mailed out to the abutting landowners to the property during the week of October 1, 2018.

The subdivision application was considered by the Planning Commission at the public hearing on October 18, 2018 at approximately 8:00 PM. Present at the public hearing were the following members of the Planning Commission: Peter Joslin (Chair), Gerald Bouchard, Richard Eastman, and Shawn Coyle. Additional participants and attendees included: the Town Planner; the applicant L Selina Peyser; applicant representatives Melanie Peyser, Gregory Peyser, Rob Woolmington (Attorney), Seth Kittridge of Kittredge Land Surveying, PLLC; and neighbors John Heaslip and Jen Whalen.

The following Findings of Fact and Decision are based on the Final Plan proceedings, and the Preliminary decision for **PC-18-73-SD**. Most of the details related to this subdivision proposal are covered within the Preliminary decision document, which has been recorded in the Charlotte Land Records (see above) and posted on the Town of Charlotte website at the following link: <https://is.gd/rohm2L>. This Final decision document primarily covers the items related to the conditions covered in the preliminary decision.

**Exhibits**

The following exhibits were submitted for the Final Plan application (in addition to those submitted for the Preliminary Plan application):

1. Completed Subdivision application form signed by Louise Selina Peyser (dated 9-11-2018);
2. Project Narrative – “Major Subdivision and Planned Residential Development - 700 Mount Philo Road, Charlotte - Supplemental Narrative” (updated 9-11-2018), including the sections:
  - I. General Description;
  - II. Project Summary;
  - III. Revisions to the Preliminary Application (and conditions);
  - IV. Final Application Submissions and Compliance with Town Plan;
  - V. Additional Supplemental Information Provided by Applicant;
  - VI. Additional Information for Planned Residential Development Review;
3. Site Plan Drawings (by Otter Creek Engineering, Inc.):
  - C-1 Overall Site Plan (revised 8-15-2018);
  - C-2 Plan for Lot A and Lot C Shared Driveway Layout and Profile (revised 8-1-2018);
  - C-3 Plan for Lot A Driveway Layout and Profile (revised 8-1-2018);
  - C-4 Plan for Lot A Driveway Layout and Profile (revised 8-15-2018);
  - C-5 Plan for Lot A Driveway, Parking, and Building Footprint (revised 8-15-2018);
  - C-6 Details and Notes (revised 4-19-2018);
  - C-7 Plan and Profile for Lot A and Lot B Shared Driveway (revised 4-19-2018);
4. Vermont DEC – Watershed Management Division – Wetlands Program: #2016-299 Mt. Philo Road Wetland Classification Report (dated July 19, 2018);
5. 3 Subdivision Plats indicating three alternative building envelopes: **Plat A** sized 2.99 acres; **Plat B** sized 2.73 acres; and **Plat C** sized 3.83 acres; each titled: A preliminary plat of the proposed of 3-lot subdivision: “Subdivision Plat of Lands Owned by James Mansfield, et-al, That are to be Conveyed to Louise Selina Peyser – Westerly Side of Mount Philo Road, Town of Charlotte, County of Chittenden, State of Vermont” (dated APR 2018) by Seth W. Kittredge, L.S. (LS #060709), Kittredge Land Surveying, PLLC, Vergennes, Vermont.;
6. Letter of approval of driveway plans from Rob Mullin, Deputy Chief, Charlotte Fire and Rescues Services, Inc. (dated August 10, 2018);
7. Letter from Art Gilman of Gilman & Briggs Environmental: Peyser Subdivision Project, 700 Mt. Philo Road, Charlotte, VT Overland drains (dated July 16, 2018);
8. Letter from Art Gilman of Gilman & Briggs Environmental: Comments on the Forest Management Plan for 700 Mt. Philo Road, Charlotte, VT (dated August 10, 2018);
9. Letter from Harris Roen, Licensed Forester (# 148.0122043), Long Meadow Resource Management, LLC, Burlington, VT (dated 7/27/2018), confirming the Forest Management Plan conforms with the Vermont Use Value Appraisal Program (i.e. “Current Use”);
10. Conservation and Open Space Agreement (Revised 9/21/2018), as per the negotiations between Town Attorney Joe McClean and applicant Attorney Rob Woolmington (file titled: *McCuin-Peyser Revised Final Open Space Agreement 09.21.2018.docx*);

11. Letter from Amor Baer, Chair of the Charlotte Conservation Commission, to the Charlotte Planning Commission: 700 Mt. Philo RD - Request for Information re: CCC Review of Forest Management Plan (dated September 6, 2018);
12. Planning Commission Decision **PC-18-73-SD**; Randi McCuin; Lance, James, Lynn, & Marjorie Mansfield; Lisa Gere; and Louise Selina Peyser Preliminary Plan Application for a 3-lot Major Subdivision/PRD at 700 Mount Philo Road, Approved by the Planning Commission: July 19, 2018;
13. Legal Opinion from the Town Attorney, Joseph McClean, Peyser Open Space Agreement (dated September 11, 2018);
14. Planning Commission Minutes from meeting held on *October 18, 2018*.
15. Conservation Commission Minutes from meeting held on *August 28, 2018*.

#### **Regulations in Effect**

Charlotte Town Plan, 2018

Charlotte Land Use Regulations, 2016

Recommended Standards for Developments and Homes, 1997

#### **Findings**

Outlined below are the two (2) conditions of the Preliminary decision (PC-18-73-SD) with the applicant's response to the condition and the subsequent findings of the Planning Commission:

1. The survey plat will be revised to reflect the following:
  - a. Update the building envelope for **Lot A** to a regularized shape and add dimensional lines as per (*Preliminary decision PC-18-73-SD*) Finding 7.2(E)(1)(a).

**Applicant Response:** "While the Applicant believes that the Revised Proposed Subdivision Plat complies with Condition 1.a and Finding 7.2(E)(1)(A) she submits two alternative subdivision plats, which are identical to the primary submission with the exception of the shape and size of each respective building envelope and amount of proposed open space."

**Commission Findings:** **The applicant has met this condition.** The applicant submitted a total of three (3) subdivision plats (see Exhibit 5 above). The Planning Commission approves the "parallelogram" building envelope indicated on Plat C sized 3.83 acres.

- b. Add the proposed structures to be developed within the building envelope for **Lot A** as per Finding 7.2(E)(1)(a). The structures shall have a note indicating their proposed heights above grade.

**Applicant Response:** "All planned buildings and structures have been added, including 1) residence, barn and driveway to be built immediately upon receipt of all approvals and permits; and 2) potential future pool and pool house (were) added to Subdivision Plat. The originally planned future tennis court has been eliminated."

**Commission Findings:** **The applicant has met this condition.**

- c. Update the building envelopes for **Lot B** and **Lot C** to a maximum of 0.9 acres each as per Finding 2.3(E)(1) and Finding 7.2(E)(1)(b).

**Applicant Response:** "Lot B and C building envelopes (were) reduced to 0.9 acres. In response to a public comment at the Preliminary Application hearing, wells for Lots B and C were relocated further east. The Lot B septic system was also moved slightly to the south to avoid overshadowing on the Cardamone-Knewstub and L. Sunderland Property."

**Commission Findings:** The applicant has met this condition.

- d. Add the full footprint of the proposed driveway and associated infrastructure as per the design recommendations of Charlotte Volunteer Fire and Rescue Services discussed in Finding 3.2(4).

**Applicant Response:** "Full driveway footprint added to Subdivision Plat, Overall Site Plan (C-1), and Driveway Plans/Profiles (C-2, C-3, C-4, C-5); Turnout added at Barn; Hammerhead before gate replaced with turnout; Parking Area at residence expanded for large vehicle turn around. Prior to initial review with CVFRS, Driveway Profile for shared access for Lots A and C (C-2) was updated to reflect VTRANS B-71 rule. Highway Access Permit received on June 19, 2018. This change is also reflected in this Final Application."

**Commission Findings:** The applicant has met this condition.

- e. Add the identified wetland delineations.

**Applicant Response:** "Subdivision Plat revised; Overall Site Plan (C-1) revised; final wetland delineations confirmed by ANR. As reflected in ANR Wetland Classification Report (WCR), wetlands, including those confirmed by ANR prior to the Preliminary Application and the remainder, confirmed in July 2018, are delineated on Sheet 2 of the Revised Proposed Subdivision Plat, as well as on Alternative Subdivision Plat A and Alternative Subdivision Plat B. Classification (Classes II and III) in WCR."

**Commission Findings:** The applicant has met this condition.

2. Update the draft Open Space Agreement to include details discussed in Finding 8.6(3) above (of Preliminary decision PC-18-73-SD), which will be re-submitted in a form acceptable to the Town Attorney and the Planning Commission.

**Applicant Response:** "A Revised Open Space Agreement (ROSA) was submitted to the Town Attorney on August 10, 2018. On September 11, 2018, the Town Attorney advised that the latest version of the ROSA should be submitted to the Planning Commission. An electronic version was submitted on September 11, 2018. Applicant provided all FMP documentation and supplementary information to the Planning Officer and CCC. A special meeting to review the FMP was scheduled for August 30, 2018. CCC response is pending."

**Commission Findings:** The applicant has met this condition. The Charlotte Conservation Commission (CCC) reviewed the Forest Management Plan at their meeting on August 28, 2018, and formed a work group to review the plan in further detail on August 30, 2018. The CCC issued the following statement to the Planning Commission regarding the FMP on September 6, 2018:

*"In regard to the forest management plan associated with 700 Mount Philo Rd. The Conservation Commission would like to compliment the applicant on the appropriateness and thoroughness of the*

*plan. We feel that the open space agreement and plan for its management more than preserves current environmental and habit assets of the property. If executed as presented will actually enhance the natural resources of the property and provide benefits in ecosystem services to the Town of Charlotte at large."*

On July 17, 2018, a copy of the Peysers' Draft proposed Open Space Agreement (OSA) was sent to the Town Attorney for review pertaining to a possible condition to be included in the Preliminary decision. On August 7, 2018 the Town Attorney, Joseph McLean and the applicant's attorney, Rob Woolmington first entered into negotiations over the content and conditions of the Open Space Agreement. The negotiation took an unexpectedly longer time to conclude than expected, on September 12, 2018. The following was submitted by the Town Attorney, Joseph McLean on September 11, 2018:

*"While there are still some substantive differences between us, I believe that the Peyser draft open space agreement is in a form that may be reviewed by the Planning Commission in connection its final plat review. If the Planning Commission has questions (as I expect it will) or requires any additional comments/recommendations/feedback, I would be happy to share my thoughts with the Commission directly. As you will see, there also remain several areas where Planning Commission input regarding permitted uses of the Open Space Area is necessary. Subject to any limitations in the LURs, the Planning Commission is, of course, free to impose conditions or accept/reject provisions of the draft Open Space Agreement as proposed by the applicant, Mrs. Peyser."*

The redlined copy of the final draft was then sent to Planning and Zoning staff on the same date for their review. However, further negotiations took place between the two attorneys on September 12, 2018. The Town Attorney sent a finalized redlined copy to the Planning and Zoning staff on September 14, 2018 (but was still titled as a September 11, 2018 version). A subsequent version was reviewed by the Planning Commission prior to the October 18, 2018 Planning Commission meeting. The applicant submitted yet another revised hardcopy version to the Commissioners at the October 18, 2018 Planning Commission meeting that was dated September 21, 2018 (see Exhibit 10 above).

### **Decision**

Based on the foregoing Findings of Fact and Conclusions, the Planning Commission approves the application for a 3-Lot Major Subdivision/Planned Residential Development subject to the following conditions:

1. As per Finding 1a, the Planning Commission approves the "parallelogram" building envelope indicated on Plat C sized 3.83 acres.
2. Two paper copies (one full size and one 11"x 17"), an electronic copy, and a mylar (measuring 18" x 24", with a margin of 2" outside of the border line for binding on the left edge of the sheet with a 1" border on all remaining edges) of the plat will be submitted to the Planning Commission for review within 160 days. The applicant will record the mylar of the plat in the Charlotte Land Records within 180 days, after being signed by the Chair or Vice-Chair of the Planning Commission. Approved plats not filed and recorded within this 180 day period shall expire.

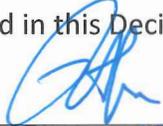
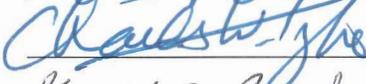
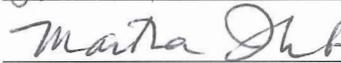
**Additional Conditions:** All plats, plans, drawings, documents, testimony, evidence, and conditions listed above or submitted at the hearing and used as the basis for the Decision to grant the permit shall be binding on the applicant, and his/her/its successors, heirs and assigns. Projects shall be completed in accordance with such approved plans and conditions. Any deviation from the approved

plans shall constitute a violation of the permit and would be subject to enforcement action by the Town. This approval shall expire if the mylar is not filed and recorded in the Charlotte land records within 180 days.

This decision may be appealed to the Environmental Division of the Vermont Superior Court by the applicant or an interested person who participated in the proceeding. Such appeal must be taken within 30 days of the latest date of signature below, pursuant to 24 V.S.A. Section 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Members Present at the Public Hearing on October 18, 2018: Peter Joslin (Chair), Gerald Bouchard, Richard Eastman, and Shawn Coyle.

Vote of Members after Deliberations: The following is the vote for or against the application, with conditions as stated in this Decision:

- 1. Signed:   For /  Against Date Signed: 11/15/2018
- 2. Signed:   For /  Against Date Signed: 11/15/2018
- 3. Signed:   For /  Against Date Signed: 11/15/2018
- 4. Signed:   For /  Against Date Signed: 11/15/2018
- 5. Signed:   For /  Against Date Signed: 11.15.18
- 6. Signed: \_\_\_\_\_ For / Against Date Signed: \_\_\_\_\_
- 7. Signed: \_\_\_\_\_ For / Against Date Signed: \_\_\_\_\_